No. 76-642

In the Supreme Court of the United States

OCTOBER TERM, 1976

DOUGLAS LAMARR CHASTEEN
Petitioner

VERSUS

THE STATE OF OKLAHOMA
Respondent

AN APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Ed R. Crockett
3733 East 31st Street
Tulsa, Oklahoma 74135
Attorney for Petitioner

Core-Lewis Printing Co. • 323 E. 3rd • Tulsa, Okla. 74120 • Phone (918) 582-1234

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CITATIONS

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No.

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This is a direct appeal under 28 U.S.C. 1253 from a decision of the highest court in Oklahoma for criminal matters, the Court of Criminal Appeals, which upheld the conviction of Appellant for the crime of Possession of Marijuana with Intent to Distribute. 63 OSA 2-401(A). Appellant was sentenced to seven (7) years in the Oklahoma State Penitentiary and is presently serving his time. Substantial federal questions are presented in two prime questions, the first being the constitutionality of the statute under which Appellant was convicted and secondly, the validity of the search of Appellant's home after an entry in apparent violation of the dictates set forth in *Sabbath v. United States,* 391 U.S. 585, 20 L.Ed.2d 828, 88 S.Ct. 1755.

JURISDICTIONAL STATEMENT

Comes now the Appellant, Douglas Lamarr Chasteen, and for his jurisdictional statement herein respectfully alleges and avers as follows:

A.
THE DECISION BELOW

The decision whose review is sought herein is styled *Douglas Lamarr Chasteen v. The State of Oklahoma* and was rendered by the Court of Criminal Appeals for the State of Oklahoma, which is the highest Court for criminal matters existing in the state. The decision is reproduced at Appendix A hereto. A Petition for Rehearing as well as a Motion to Recall Mandate and to Set Bail pending appeal to the Supreme Court were filed and overruled and the same are reproduced as Appendix B and Appendix C hereto. A timely notice of appeal was filed and an extension granted until the 9th of November, 1976, by Mr. Justice White.

B.
SUPREME COURT JURISDICTION

This appeal is taken pursuant to Title 28, United States Code, Section 1257, sub-paragraph 2. Since the State Court has examined the Constitutionality of the State's statutes, this Court has jurisdiction to re-examine the final judgment. (1897) *New York, New Haven, and Hartford Railroad Company v. New York,* 165 U.S. 628, 41 L.Ed. 853.

C.
STATUTES CHALLENGED

Appellant challenges the validity of Title 63, Oklahoma Statutes Annotated, Section 2-401 (Supp.) which states as follows:

> A. Except as authorized by this act, it shall be unlawful for any person: (1) to manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense, a controlled dangerous substance; (2) to create, distribute or possess with intent to distribute, a counterfeit controlled dangerous substance.
>
> B. Any person who violates this section with respect to:
>
> Any other controlled dangerous substance classified in Schedule I, II, III, or IV is guilty of a felony and shall be sentenced to a term of imprisonment for not less than two (2) years nor more than ten (10) years and a fine of not more than Five Thousand Dollars ($5,000.00). Such sentence shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation.

Marijuana is classified as a controlled dangerous substance. 63 O.S.A. 2-101 (19).

QUESTIONS PRESENTED

The first question to be decided in this appeal is the constitutionality of the Oklahoma Statute under which the Appellant was convicted. The crux of the issue is whether Appellant is being punished because of a state of mind or a status rather than for a specific

act. *Robinson v. California,* 370 U.S. 660, 8 L.Ed.2d 758, 82 S.Ct. 1417 (1962). Punishment for a state of mind rather than for an act is heretofore unknown in American jurisprudence. Appellant contends the statute violates his Sixth Amendment right to be informed of the nature and the cause of the accusation against him.

B. The second question presented on appeal is the validity of the search of Appellant's home. The record in this case reflects the officers testified they opened the screen door of the house and were admitted into the remainder of the house by the occupant, the Appellant. Oklahoma Statutes permit officers to break open an outer door of a house if they are refused admittance. See Title 22, O.S.A. 1228. However, the Supreme Court in *Sabbath v. United States,* 391 U.S. 585, 20 L.Ed.2d 828, 88 S.Ct. 1775 (1968) construed an identical Federal statute and held unlawful an entry by Federal officers who had knocked and then opened the door themselves. The question to be resolved here is whether the opening of the screen door amounts to an intrusion in ultimate violation of Appellant's Fourth Amendment rights.

STATEMENT OF THE CASE

The Appellant, Chasteen, was tried and convicted in Tulsa County, Oklahoma, for the offense of Possession of Marijuana With Intent to Distribute. He was found guilty after a nonjury trial and sentenced to serve seven

(7) years in the custody of the State Department of Corrections as well as being fined Three Thousand Five Hundred Dollars ($3,500.00).

Basically, the testimony was that police officers went to the Appellant's home on the 17th of December, 1974, with a search warrant. The transcript reflects the primary officer, Officer Bell, first opened the screen door and then identified himself as a police officer upon which time he gained admittance to the residence and served a copy of the search warrant upon the Applicant. A sizeable quantity of marijuana was found in the residence. The Motion for New Trial was overruled by the trial Court and the conviction was affirmed on appeal by the Court of Criminal Appeals of the State of Oklahoma.

THIS CASE IS SUBSTANTIAL

"Is a thought an act? In one sense of the word an affirmative answer is required. A thought is the so-called 'act of the mind' or 'internal act'. If we start with the premise that thoughts will be matters of utter indifference to the law unless they are acts, it is necessary to include the former under the head of the latter. An act done with the intent to defraud, for example, may have legal consequences quite different from those which attach to another act which is exactly the same except for the want of such intention. But the suggested premise is faulty. Physical facts may have very important legal consequences, at least insofar as they induce or accompany 'external acts'; but this can be conceded and expressed without calling them 'acts'. As it is neither

> convenient nor common to employ the word 'act' to include the so-called 'internal act', any such usage should be rejected. Psychic facts and the psychic element in acts have been, and will continue to be, the object of juridical consideration, although . . . only when shown in action."

The above citation from *Perkins on Criminal Law,* 2nd Edition, The Foundation Press, Inc., 1969, emphasizes why this case is a substantial one. Oklahoma is one of those many states which, since the inception of the narcotics problem, has attempted to punish persons by mere thoughts alone rather than by acts. Thus far, only the Virginia courts have given any more than lip service to the problem. *Sharp v. Commonwealth,* 192 S.E.2d 217 (1972). The Oklahoma courts have refused to strike down the statute under which Appellant was convicted. *Reynolds v. State,* Okl. Cr., 511 P.2d 1145. Although Appellant did not urge this particular issue in his appeal brief to the Court of Criminal Appeals, it was later urged in a motion to recall the mandate and to set bail pending appeal to the United States Supreme Court which was filed on the 21st of July, 1976. *Grannis v. Ordean,* 234 U.S. 385, 58 L.Ed. 1363. More than one constitutional problem is created for someone accused under this particular statute. The first problem is if someone is in possession of contraband, i.e., controlled drug, then he is obliged to take the witness stand in his own behalf and tell what was actually in his mind at the time he was in possession of the goods, otherwise

the law will do it for him. He may not reveal his inner thoughts without incriminating himself. This Court has held the privilege against self-incrimination is intimate and personal and respects a private inner sanctum of individual feeling and thought, and proscribes state intrusion to extract self-condemnation. *Counts v. United States,* 1973), 409 U.S. 322, 44 L.Ed.2d 548, 93 S.Ct. 611.

The second problem is his Sixth Amendment right of his right to be informed of the nature and cause of the accusation against him as well as the right to be confronted with witnesses against him. With such an oppressive statute, surely the framers of the Constitution did not intend to include a state of mind or thought as being the nature and cause of the accusation against him. Secondly, the only witness against him is himself and the information or the indictment which accuses him of possessing an illegal state of mind, to-wit: having the intent to distribute a controlled dangerous substance. State of mind offenses, it would appear, could be classified in the same category as so-called status offenses wherein a person is punished for a status. See *Robinson v. California,* 370 U.S. 660, 8 L.Ed.2d 758, 82 S.Ct. 1417 (1962), addiction to the use of narcotics and *Lanzetta v. State of New Jersey,* 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888 (1939), gang membership.

B. The entry into Appellant's home. It will be the

contention of the Appellant that his Fourth Amendment rights were violated due to the method of entry by the intruding officers. We believe a substantial question is presented herein for the following reasons. This Court decided in *Sabbath v. United States,* 391 U.S. 585, 20 L.Ed.2d 828, 88 S.Ct. 1755 (1968), that an intrusion by a Federal officer without a search warrant must be tested by the same criteria as those embodied in the provisions of 18 U.S.C., Section 3108, dealing with exection of search warrants. In *Sabbath,* Officers knocked, waited a few seconds and, receiving no response, opened the unlocked door and entered the apartment with guns drawn. This Court noted in *Sabbath* that:

> "An unannounced intrusion into a dwelling—what section 3109 basically proscribes—is no less an unannounced intrusion whether officers break down a door, force open a chain lock on a partially open door, open a locked door by use of a pass key, or, as here, open a closed but unlocked door. The protection afforded by, and the value inherent in, Section 3109 must be 'governed by something more than the fortuitous circumstances of an unlocked door' *Keiningham v. United States,* 109 U.S. App. D.C. 272, 276, 287 F.2d 186, 130 (1960)."

This Court also held at Footnote 5 that the mere pushing open of a closed door to the entrance of a house or even a closed screen door constituted a breaking by the intruding officers. We have a situation herein

where the officers opened the screen door which we contend is actually an intrusion but yet did not open the remaining door which would have permitted them into the interior of the house. It is Appellant's contention that this constituted an entry by the officers. What is at stake here is the security of citizens, not technicalities. It would appear that the mere opening of a screen door by an unannounced intruder would be frightening to many citizens of today. We desperately need clarification or an extension, if you will, of *Sabbath* so that both the security of citizens might be protected and secondly, so that officers will know the precise limits to which they might go in such instances as this.

ED R. CROCKETT
3733 East 31st Street
Tulsa, Oklahoma 74135
Attorney for Petitioner

APPENDIX A

No. F-75-692

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

DOUGLAS LAMARR CHASTEEN
Appellant

versus

THE STATE OF OKLAHOMA
Appellee

OPINION

BUSSEY, JUDGE:

The Appellant, Douglas Lamarr Chasteen, hereinafter referred to as defendant, was charged, tried and convicted in the District Court, Tulsa County, Case No. CRF-74-2729, under 63 O.S. 1971, § 2-401 § A (1), for the offense of Possession of Marijuana with Intent to Distribute. A non-jury trial was held on the 9th and 16th days of April, 1975, and thereafter the defendant was sentenced to seven (7) years imprisonment and a fine of Three Thousand Five Hundred Dollars ($3,500.00). From said judgment and sentence, defendant filed this timely appeal.

The first witness for the State was Officer Donald

Wayne Bell of the Tulsa Police Department. Officer Bell testified that he had been a police officer for some seven years and eleven months, the last two years of which he had served as a narcotics detective. At this point, the officer gave his qualifications as a narcotics officer based on his experience, in an attempt to qualify him as an expert in the field of narcotics and marijuana identification. This witness then identified the defendant as Douglas Lamarr Chasteen. He further testified that he first saw the defendant on the 17th day of November, 1974, when he went to the home of the defendant armed with a search warrant issued by the District Court of Tulsa County. He further testified that the home was located at 1335 South Atlanta in the City of Tulsa, Tulsa County, Oklahoma. The witness then identified and described the chain of custody concerning approximately fifty exhibits in number, which included: a black trunk, containing seven plastic baggies, a paper sack, a pair of scales, a brown grocery bag, an empty wrapper described by the witness as a kilo wrapper, cigarette paper, several pounds of substance and stems later identified as marijuana, a red trunk containing approximately thirty-two pounds of substance later identified as marijuana, and two photographs. The witness then testified that he advised the defendant and his wife of their constitutional rights under the *Miranda* decision, and the defendant acknowledged by word of mouth that he knew and

understood these rights. The witness was then allowed to testify, over the objection of counsel for defense, that such scales and bags were used for the purpose to subdivide the marijuana into smaller lots in order that it might be sold on the street. The witness further gave his opinion testimony as to the street value of the marijuana, and as to how much marijuana a normal user could consume in a given period of time. Cross-examination by counsel for defense consisted mainly of questions concerning the issuance and service of a search warrant issued by the Tulsa County District Court for the premises located at 1335 Atlanta in that city and county. The police officer serving the warrant testified that he opened a screen door first, and then knocked on the hard door where he then identified himself as a police officer and gave his authority for entering the premises. [Tr. 61] The witness further testified that after conducting a search of an automobile seen coming from the home of defendant, additional information was added to the Affidavit in support of said search warrant, by hand. The witness further testified that some of the items identified by him had more than one purpose; such as, the the plastic baggies and the brown paper sacks and that they could be employed for uses other than the distribution of controlled substances, or marijuana. On re-direct, the witness testified that in his opinion the substance belonged to the defendant in this case because it was

located in his house. Re-cross was directed toward the the issuance and service of the search warrant.

The final witness for the State was Dr. Ken Williamson, who testified that he was a forensic chemist employed by the Tulsa Police Department. Both parties agreed and stipulated into the record as to the qualifications of Dr. Williamson. After the stipulation, the witness testified that the green leafy substance contained in some of the exhibits identified by the previous witness, and the stems identified by the previous witness, were, in fact, in his opinion, marijuana. At this time the State offered all of the above exhibits into evidence, said exhibits having been seized as a result of the search warrant previously mentioned. The items were admitted over the objection of counsel for defense. After the admission of the exhibits the State announced that it rested, and after interposing his Demurrer, the defense rested.

In his first assignment of error, the defendant urges that the search and seizure in this case was unconstitutional and that, therefore, the court erred in admitting the evidence and exhibits over the objection of defendant. For his first proposition in this regard, the defendant argues that the Affidavit in support of the search warrant was substantially based on illegally-seized evidence, such that the search warrant was tainted. The Affidavit, in

pertinent part, reads as follows:

> "The undersigned affiant being first duly sworn, upon oath says: that in Tulsa County, Oklahoma, at and upon or within a certain vehicle, house, building or premises, the curtilage thereof and the appurtenances thereto belonging, described as follows:
>
> "A red brick dwelling house located on the east side of Atlanta Place in the 1300 block south Atlanta Place. This dwelling has a silver asbestos shingle roof and has white wood trim. Immediately south of the front door is a wooden plaque in the shape of the State of Oklahoma. On this plaque are the numbers 1335. The numbers 1335 also appear on the curb in front of the dwelling. The location of this dwelling is most commonly referred to as 1335 South Atlanta Place, Tulsa, Tulsa County, State of Oklahoma.
>
> * * *
>
> "Affiant further states that they have been Tulsa Police Officers for approximately seven years and have been assigned to the narcotics division for over two years. That they have been trained by the Department of Justice in the recognition and identification of narcotics and other controlled dangerous substances and in the administration of field test to determine the probable contents of suspected drugs.
>
> "Your Affiants further state that they have known a person for the past six months who is personally acquainted with the defendant and has had conversations with the defendant during the past few days concerning narcotics. On the 14th of November, 1974, said person had a conversation with the defendant and the defendant told said person that he

would be leaving soon for Texas to get a large quantity of marijuana and would be bringing the marijuana back to his residence just as soon as he could make the trip. Said person further stated to Your Affiants that the defendant said he would be selling the pounds of marijuana and that said person could buy as many as he wants.

"The person providing Your Affiants with this information has given your affiants information concerning narcotics traffic in the Tulsa area on several occasions and as a result of his information there have been four convictions in Tulsa District Court for narcotics violations and a large quantity of narcotics and dangerous controlled substances have been seized during investigations involving those persons."

[The above portion of the Affidavit was type-written, and the following portion was hand-printed.]

"In the evening hours of the 17th day of Nov. 1974 said person called your Affiants and stated he had just left the above described dwelling and while there had observed several pounds of marijuana in green and white sacks.

"At approx. 7:45 P.M. on the 17th day of Nov. 1974 Your Affiants observed William Hurst come to the above residence in a late model green Chevrolet. Your Affiants observed William Hurst leave this veh. and go directly to the above described dwelling and remained there in for approx. 7 minutes, Your Affiants observed William Hurst leave the above described dwelling carrying three bags. William Hurst then got back in the late model Chev. with another unk. subj. and drove away from the area of the above described dwelling.

"Your Affiants then called a uniform officer to assist your Affiants in stoping [sic] and arresting William Hurst and recovering the three pounds of marijuana.

"William Hurst is a known narcotics user and dealer and has been arrested on drug charges by your Affiant on at least one previous occasion."

[The next portion was hand-written.]

"The above hand printed information was included prior to the administration of the oath in my presence.

Earl Truesdell
Judge."

[The last portion was type-written.]

"WHEREFORE, Affiant asks that a search warrant issue according to law, directed to any sheriff, policeman or law enforcement officer in the County of Tulsa, Oklahoma, commanding that he search the said persons, premises and/or vehicle, and take possession of all of the controlled dangerous substances, equipment and paraphernalia hereinbefore described, and any vehicle in which said dangerous substance is unlawfully kept, deposited or concealed.

/s/ Don Bell & Charles Jackson
Affiants."

The thrust of the defendant's contention that the Affidavit was substantially based upon illegally obtained evidence is premised on the hand-written portion relating to the search of the vehicle and seizure of drugs therefrom, as set forth in the hand-written portion of the

Affidavit upon which the trial judge in the instant case had sustained a Motion to Suppress against the owners and occupants of the automobile in a separate and distinct prosecution wherein they (Hearst and Deathridge) were charged as defendants. There is not one scintilla of evidence tending to indicate that the defendant in the instant case had any proprietory interest or claim of ownership in the automobile seized, nor was he charged as a defendant as a result of that search and therefore would have no standing to raise the legality of the search and seizure of said vehicle had he been charged in that case. Even the most cursory examination of the Affidavit for the search warrant, above set forth, demonstrates that it established probable cause and met all the requirements set forth in *Guthrey v. State,* Okl. Cr., 507 P.2d 556. The search warrant issued on said Affidavit described with particularity the premises to be searched and the contraband sought to be seized therefrom. Clearly, this assignment of error is without merit.

For his second proposition under this assignment of error, the defendant argues that the search of the defendant's residence was illegal and evidence seized thereby inadmissible, due to premature action of an officer of the State in entering the defendant's residence to serve the search warrant. We are of the opinion that the search warrant was properly served. The record reveals that the officer opened an outer screen door, reached

through the same and knocked on a hard door. Nowhere in the record can it be found that the defendant produced evidence to show that the officers entered the confines of his home without first giving their identity and authority for such a search. Therefore, this case is distinguishable from *Sears v. State,* Okl. Cr., 528 P.2d 732 (1954) where the officer serving the warrant actually "crossed the threshold" and entered the interior of the defendant's home.

For his second [third] assignment of error, the defendant urges that the trial court erred in admitting into evidence, over his objection, testimony by Detective Bell concerning matters beyond his expertise and knowledge—testimony which prejudiced the trial judge's decision. Defendant particularly complains of the witness, Officer Bell, giving his opinion as to the street value of marijuana and as to the amount which could be consumed by a normal "user." We have previously held in *Davis v. State,* Okl. Cr., 514 P.2d 1195 (1973), that the street value of drugs is properly admissible to show intent to distribute. While the attempt to qualify Officer Bell as an expert in the field of marijuana and narcotics was something less than ideal, it was adequate to meet the test heretofore approved by this Court. Officer Bell did give testimony concerning his training, experience and knowledge in the field of narcotics and marijuana identification. Since the trial court alone was the sole

judge of the value of this evidence and the weight to be given the opinion of the witness, we hold that this is not such error requiring modification or reversal.

The third [fourth] assignment of error urged by defendant is that the evidence presented was insufficient for the trier of the fact to find the defendant guilty beyond a reasonable doubt. More particularly, the defendant argues that there was insufficient evidence to convict the defendant, which established his intent to distribute. In *Birdshead v. State,* Okl. Cr., 515 P.2d 1400 (1973), we stated:

> " . . . This Court has repeatedly held that where there is competent evidence in the record from which the trier of facts could reasonably conclude that the defendant was guilty as charged, this Court will not interfere with the trier of the facts determination upon the grounds that evidence is insufficient to sustain the verdict. See Tilley v. State, Okl. Cr., 511 P.2d 586."

In the instant case, there was evidence of a large quantity of marijuana, wrappers and packages which are commonly used for the distribution of marijuana, and of scales used for the weight, measuring, and cutting of marijuana. We are of the opinion that, as a matter of law, there was sufficient evidence from which the trier of fact could determine that there was intent to distribute. See *Reynolds v. State,* Okl. Cr., 511 P.2d 1145 (1973), in which we cited with approval *Murphy v. State,*

79 Okl. Cr. 31, 151 P.2d 69 (1944), wherein we stated:

> "Where intent is necessary in the commission of a crime, it is a question for the jury, under all the facts and circumstances, of each individual case. It may be proved by direct or circumstantial evidence."

For his next assignment of error, the defendant asserts that 63 O.S. 1971, § 2.401 ¶ B(2) is unconstitutional. Defendant argues that the subsection which prohibits the deferred or suspended sentence is in violation of the rule of separation of powers and is, therefore, unconstitutional. We need only observe that this Court has held on numerous occasions that this statute is valid. See, *Black v. State,* Okl. Cr., 509 P.2d 941 (1973). However, we should also point out that the question is now moot. See *Lampe v. State,* Okl. Cr., 540 P.2d 590 (1975). In light of the judgment and sentence in the above styled case, we also call defense counsel's attention to 22 O.S. 1971, § 991 c and 22 O.S. 1971, § 991 a.

For his final assignment of error, defendant urges that the trial court erred in adhering to purported sentencing prohibitions in the above cited statute and in overruling a motion for continuance until the revised Act was properly in effect. We are of the opinion that this argument is without merit. The defendant was sentenced under the authority of 63 O.S. 1971, § 2-401 § B(2) in force and effect at the time the defendant was sentenced. The term of seven (7) years and a fine of

Three Thousand Five Hundred Dollars ($3,500.00) is within the limits of the statute and does not, under the facts and circumstances, shock the conscience of this Court.

For his second proposition under this assignment of error, defendant argues that the trial court erred in overruling his motion for continuance. Defendant sought the continuance on the basis that the Legislature had enacted 63 O.S. Supp. 1975, §2-401, which would, effective September 5, 1975, authorize the court to suspend or defer the judgment and sentence in the instant case. This Court has repeatedly held the question of granting a motion for continuance lies within the sound discretion of the trial court. See, *Jones v. State,* Okl. Cr., 456 P.2d 613 (1969) and *Lewis v. State,* Okl. Cr., 462 P.2d 336 (1969). We would only point out that the defendant in the instant case was charged, tried, convicted and sentenced under the law applicable at each of the above times. If the defendant wishes to apply for a deferred or suspended sentence in the trial court, he should proceed in the manner set forth in *Lampe,* supra. See, also *Goodner v. State,* Okl. Cr., 546 P.2d 653 (1976).

For all of the above and foregoing reasons, the judgment and sentence appealed from is accordingly AFFIRMED.

AN APPEAL FROM THE DISTRICT COURT,
TULSA COUNTY, OKLAHOMA,
HONORABLE RICHARD ARMSTRONG, JUDGE

DOUGLAS LAMARR CHASTEEN was convicted for the offense of Possession of Marijuana with Intent to Distribute; his punishment was fixed at seven (7) years' imprisonment and a fine of Three Thousand Five Hundred Dollars ($3,500.00), and he appeals. AFFIRMED.

ASTON & CROCKETT
by ED R. CROCKETT,
TULSA, OKLAHOMA,
Attorneys for Appellant,

LARRY DERRYBERRY, Attorney General,
ROBERT L. McDONALD, Asst. Atty. Gen.,
DOUGLAS L. COMBS, Legal Intern,
Attorneys for Appellee.

OPINION BY BUSSEY, J.,
BRETT, P.J. and
BLISS, J., Concur.

APPENDIX B

No. F-75-692

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

DOUGLAS LAMARR CHASTEEN,
Appellant

versus

THE STATE OF OKLAHOMA
Appellee

ORDER DENYING PETITION FOR REHEARING AND DIRECTING THE ISSUANCE OF MANDATE

NOW, on this 12th day of July, 1976, the Court having carefully considered the Appellate's Petition for Rehearing and after complete examination of the record in the case, finds that said Petition for Rehearing should be, and the same is hereby, DENIED.

The Court further finds that Mandate should issue FORTHWITH.

IT IS SO ORDERED.

WITNESS OUR HANDS, and the Seal of this Court, this 12th day of July, 1976.

/S/ Tom Brett
TOM BRETT, Presiding Judge

/S/ Hez J. Bussey

/S/ C. F. Bliss, Jr.
C. F. BLISS, JR., Judge

ATTEST:

/S/ Ross N. Lillard, Jr.
CLERK

APPENDIX C

No. F-75-692

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

DOUGLAS LAMARR CHASTEEN
Appellant

versus

THE STATE OF OKLAHOMA
Appellee

MOTION TO RECALL MANDATE
AND TO SET BAIL PENDING APPEAL
TO THE UNITED STATES SUPREME COURT

Comes now the Appellant, Douglas Lamarr Chasteen and moves this Honorable Court to recall the mandate and to set bail pending Appeal to the United States Supreme Court, for the reason and upon the following grounds:

I.

The affidavit in support of the search warrant was based on illegally seized evidence as determined by a Tulsa County District Court, such that the search warrant was tainted. *Wong Sun vs. United States,* 371 US 471, 83 S. Ct. 407, 9 LEd 2d 441 (1963), has held that the essence of the Constitution prohibition against unreasonable search and seizure is not merely that "evi-

dence so acquired shall not be used before a court but that *it shall not be used at all.*

It is contended that illegally seized evidence should not be used *at all,* regardless of from whom the evidence was illegally seized and against whom the evidence is to be used.

II.

The search warrant was unconstitutionally executed in that plainclothed police officers initiated entry into Appellant's home before stating their authority and purpose and without ever being denied admittance.

Numerous federal cases have recognized the individual's right of privacy and security in his home such that prior notice of identification and purpose are requisite to entry. It is contended herein that while the opening herein of the screen door did not gain the Police Officer absolute entry, it did present great possibility of such entry causing the Appellant—resident great concern as to the identification and purpose of these plainclothed men "breaking" into his home.

As such, Appellant's home was unconstitutionally entered and searched and evidence thereby illegally seized and unlawfully used against him.

III.

The State failed to prove the Appellant guilty of the crime charged, to-wit, Possession of Marijuana with

intent to distribute such that Appellant has been denied due process of law. It is contended that "intent" statutes such as the one herein involved 63 O.S. 1971 § 2-401 (A)(1) without the requirement that overt acts in execution of that intent be proven, is unconstitutional. Legislation of this nature seeks to punish thoughts, rather than acts.

In the case herein, no direct evidence or overt act of an intent to distribute was ever shown by the state. "Mere preparation for commission of a crime, not proximately leading to its consummation, does not constitute an attempt to commit that crime." *Groves vs. State,* 42 S.E. 755 (Ga. 1902).

Under this law then, the Appellant is presumed guilty of an act which is to be committed in the future and is therefore punished for an act which he has not committed. As such, he has been deprived of the fundamental right of due process.

It is further argued that the "intent to distribute" involved herein should be stricken for vagueness, as it contains no definition, guidelines or boundaries whatsoever. In *Sharp vs. Commonwealth,* 192 SE 2d 217 (Va., 1972) a statute, similar to Oklahoma's, yet authorizing conviction based solely upon quantity, was held unconstitutionally vague and ambiguous. The Court stated, "Under the subsidiary provision of the statute, a person of ordinary intelligence in possession of a quantity of

marijuana could not with reasonable certainty know whether he was guilty of the misdemeanor of mere possession or the felony of possession of marijuana with intent to distribute."

Oklahoma's statute does not even have quantity as a guideline and is thus less specific than the unconstitutionally vague Virginia statute.

In the present case, Appellant was not proven to have committed any acts which would justify elevation of the charge beyond the simple misdemeanor of possession of marijuana.

As long as intent remains subjective and no attempt is made to convert that intent from a thought to a reality, there is no way to determine that intent with certainty and the same should not be made the subject of criminal punishment.

IV.

63 O.S. 1971 § 2-401 (B)(2) under which appellant was sentenced, is and was unconstitutional in regard to its purported prohibition of the Trial Judge to suspend or defer sentences.

It is contended that this prohibition was an invasion of judicial powers by the State Legislature, in violation of the inherent power of the Court to see appropriate justice rendered as well as Article IV of the Oklahoma Constitution which reads in part as follows:

"The Legislative, Executive and Judicial departments of government shall be separate and distinct; and neither shall exercise powers properly belonging to either of the others."

V.

It is finally contended that the legal status of the drug marijuana has become so varied among the states as to make the resulting inconsistency confusing and that due to the nationwide controversy of this drug, a uniform decision as to its legality should here and now be be decided by the United States Supreme Court.

Further, Appellant would request recognition that he has been on bail pending appeal and that from that time on has earnestly tried to live the life of a model citizen. That he is in no manner a danger to society but a useful and working part thereof.

WHEREFORE, premises considered, Appellant, Douglas Lamarr Chasteen prays the Court grant relief to him in accordance with the substance of this motion.

DOUGLAS LAMARR CHASTEEN

By_____

Ed R. Crockett of Aston & Crockett
Attorney for Appellant
3733 East 31st Street
Tulsa, Oklahoma 74135
749-2265

CERTIFICATE OF MAILING

I hereby certify that on this ____ day of July, 1976, a full true and correct copy of the foregoing instrument was mailed to the offices of Mr. Larry Derryberry, Attorney General's Office, State Capitol Building, Oklahoma City, Oklahoma and to Mr. Buddy Fallis, District Attorney's Office, Tulsa County Court House, Tulsa, Oklahoma, with sufficient postage thereon fully prepaid.

_____

Ed R. Crockett

APPENDIX D

IN THE DISTRICT COURT OF THE 14TH JUDICIAL DISTRICT
OF THE STATE OF OKLAHOMA,
Sitting in and for Tulsa County, Oklahoma.

THE STATE OF OKLAHOMA)
TULSA COUNTY) ss.

THE STATE OF OKLAHOMA, Plaintiff,
vs.
No. CRF-74-2729

DOUGLAS LAMARR CHASTEEN, Defendant
D.O.B. 9/26/51

JUDGMENT AND SENTENCE ON CONVICTION

Now, on this 14th day of May, A.D. 75, the same being a juridical day of said court, and the time duly appointed for judgment in the above-entitled cause, and said cause coming on for judgment, and the defendant, DOUGLAS LAMARR CHASTEEN being personally present in open court and being duly represented at all appearances before the court by his attorney of record, ED CROCKETT

and having been legally charged with the offense of UNLAWFUL POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

and having been duly informed of the nature of the charge and having been duly arraigned thereon, and having duly and properly pleaded not guilty to said offense, after having been duly advised of his rights, and having been duly and legally tried and convicted of the crime of UNLAWFUL POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

and the defendant having been asked by the court whether he has any legal cause to show why judgment and sentence should not be pronounced against the defendant, and none appearing to the court, it is the judgment of the court that said defendant is guilty of the crime of UNLAWFUL POSSESSION OF MARIJUAN WITH INTENT TO DISTRIBUTE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the said defendant DOUGLAS LAMARR CHASTEEN be, and he hereby is sentenced to serve a term of **seven (7) years in an institution to be designated by the Dept of Corrections and fined $3,500.00**

for the crime of UNLAWFUL POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

and he is hereby ordered committed to the custody of the Department of Corrections of the State of Oklahoma for classification and assignment by said Department to an institution or facility operated by or under the jurisdiction of said Department. The term of sentence to begin at and from the delivery of the defendant to said Department at the Oklahoma State Penitentiary at McAlester, Oklahoma. It is further ordered that said defendant pay the costs of this prosecution, taxed at $ for which judgment is hereby rendered against the defendant, and thereupon the defendant is by the court notified of his right to appeal.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the court that the Sheriff of Tulsa County, Oklahoma, transport said defendant to the State Penitentiary at McAlester, Oklahoma, and that the Warden of said penitentiary detain the defendant as directed by this judgment, under the seal of the court, and deliver to the Sheriff of Tulsa County, Oklahoma, for his compliance of this judgment, sentence and order, one of the duplicates to accompany the body of the said defendant to said penitentiary at McAlester, Oklahoma, and to be left therewith at the said penitentiary, said copy to be warrant and authority for the imprisonment of the said defendant and the other copy to be the warrant and authority of said Sheriff of Tulsa County, Oklahoma, for the transportation and imprisonment of the said defendant as hereinbefore provided. Said Sheriff to be returned to the Clerk of said Court with the proceedings thereunder endorsed thereon.

Richard V. Armstrong
District Judge

Attest:

DON F. AUSTIN, Court Clerk
By Court Noble
Deputy Court Clerk

COURT REPORTER: K. NOULLES
ASS'T D.A.: JERRY TRUSTER

CERTIFICATE OF SERVICE

I, Ed R. Crockett, counsel of record for the Appellant herein, do hereby certify that I served three copies of this Jurisdictional Statement upon counsel for all Appellees herein, to-wit: upon the Hon. Larry Derryberry, Attorney General of the State of Oklahoma, by mailing same to him at his office in the State Capitol Building, Oklahoma City, Oklahoma, with first class postage thereon fully prepaid.

ED R. CROCKETT
Attorney for Appellant